

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

AMY COHEN, et. al,  
Plaintiffs,

v.

BROWN UNIVERSITY,  
VARTAN GREGORIAN and  
DAVID ROACH,

Defendants.

C.A. No. 92-0197-P

SETTLEMENT AGREEMENT AND STIPULATION OF DISMISSAL  
IN REGARD TO EQUALITY OF TREATMENT

This Settlement Agreement is made between Plaintiffs and Defendants, Brown University, Vartan Gregorian and David Roach (collectively referred to as "Brown"). This Agreement settles claims in this matter concerning the relative support provided to men and women student athletes and potential student athletes at Brown. With its execution and Court approval, at the end of the term of this Agreement, claims in this matter concerning that issue are dismissed with prejudice. This agreement does not resolve and shall in no way affect consideration of claims concerning whether Brown is effectively accommodating the interests and abilities of the members of the Plaintiff class in accordance with Title IX.

PREAMBLE

WHEREAS Brown University asserts that it is a national leader in the number of intercollegiate sports offered to its undergraduate students of both sexes, has been a national leader in the number of Intercollegiate sports offered to its undergraduate women since the 1970's and, accordingly, continues to have a higher proportion of women as compared to men in its intercollegiate

athletics programs than most colleges and universities in the United States; and

WHEREAS Brown University asserts that it has been and remains committed to excellence in its athletics programs, at all levels, including its programs for women, which programs have continually flourished and improved; and

WHEREAS Brown University asserts that Brown's present program does not discriminate against either gender; and

WHEREAS Brown University asserts that it has a longstanding commitment to provide a non-discriminatory educational experience in all respects, including its athletics programs; and

WHEREAS this suit was commenced in or around April, 1992 by certain named Plaintiffs for and on behalf of themselves and a class of present and future Brown University women students and potential students who participate, seek to participate, and/or are deterred from participating in intercollegiate athletics funded by Brown; and

WHEREAS Plaintiffs assert that Brown has been and is in violation of Title IX of the Education Amendments of 1972, in that, among other things, Brown has provided and continues to provide men athletes and potential athletes with support superior to that which it has provided and continues to provide to women athletes and potential athletes; and

WHEREAS Plaintiffs undertook extensive discovery concerning the assertions referred to above; and

WHEREAS the parties would prefer to avoid lengthy litigation concerning the issue of whether, in the past, disparities existed in the support Brown provided to men and women athletes and potential athletes, believe that pursuing the issue further would serve no beneficial purpose, and desire to resolve their dispute in regard to the relative support provided by Brown to men and women athletes and potential athletes;

NOW THEREFORE, the parties agree as follows:

A. Term Of Agreement.

This Agreement shall become effective as of the date of its execution upon final approval by the Court and shall remain in effect for a period of three years from the date of its execution by the parties. Any claims made by Plaintiffs regarding alleged violations of this Agreement shall not extend the term of this Agreement beyond October 30, 1997. On October 30, 1997, all claims regarding the matters addressed in this Agreement shall be dismissed with prejudice. The dismissal shall be self-executing.

B. Application To Teams.

This Agreement applies to funded varsity teams at Brown as to which there is currently no dispute concerning their funded varsity status.

C. Effect On Suit.

This Agreement is intended to resolve the parties' dispute concerning the relative support provided to men and women student athletes and potential student athletes at Brown, but

is not intended to resolve or affect the resolution of the parties' dispute concerning whether Brown is effectively accommodating the interests and abilities of the members of the Plaintiff class in accordance with Title IX. This Agreement is not intended to preclude consideration by the Court of any evidence relevant to the latter dispute, but is intended to eliminate the need for consideration by the Court of any evidence relevant solely to the former dispute.

D. General Principles

1. This Agreement is intended to insure continuing comparability of the women's and men's varsity programs on an overall basis, including, but not limited to, in the following areas:

- a. Sufficient resources will continue to be provided to all varsity teams to allow each team to continue to compete. These funds may come from either or both of university budgeted or gift account funds;
- b. Brown may allocate budgeting of various line items among University and Gift accounts on a proportionate basis, provided the proportion is the same for all teams and provided that such allocation does not result in failure to fulfill the terms of this Agreement. The University maintains the right to distribute University funds as it sees fit, provided that such distribution does not disproportionately affect one gender in

comparison to the other, provided further, however that this provision shall not be construed to require comparison on a team by team or overall gender basis of actual dollar expenditures. Comparability shall be determined by the nature of the programs, not the cost. It is understood and agreed that comparability does not imply or mean that every team will be provided identical funding or any other item provided to any other team. Further, different teams may receive different levels of support.

2. Each women's and men's head coach will be required to devote the same minimum number of hours to fundraising activities, such minimum to be determined. Each coach shall be required to take steps necessary to result in the generation of at least three fundraising communications (e.g. newsletters or Brown University Sports Foundation inserts) per year. There will be no prohibition against any team accepting gifts of non-essential equipment.
3. For purposes of this agreement, the "current" year shall be the 1994-95 academic year unless indicated otherwise.
4. Consistent with Brown's policies, the fact of this suit, or actions of any individual in connection with the commencement or prosecution of this suit will not influence the conditions, continuation or otherwise with

respect to his or her employment or participation in university athletics.

5. The programs and policies described herein are those presently in place at Brown. The presence of any program or policy in this Agreement does not imply either that the program or policy was not previously in place at Brown or that Brown must fund any specific number of varsity teams or any specific varsity team.

E. Locker Rooms, Practice & Competitive Facilities

1. Locker Rooms

- a. Locker rooms shall continue to be allocated equitably on a program-wide basis among men and women student athletes. No change in the present system is anticipated unless athletic teams are eliminated or added. No substantial reallocation from the 1994-95 allocation is presently contemplated. The current locker room assignments by teams are set forth in Attachment A.
- b. The allocation of locker rooms shall be as nearly proportionate as possible, within any facility, to the overall participation ratio of women and men student-athletes in the following categories:
  - i. Locker rooms assigned to teams for year round exclusive use;
  - ii. Locker rooms assigned to teams for competitive/practice season exclusive use;

- iii. Locker rooms assigned to teams for competitive/practice season shared use; and
- iv. Assignment of teams to use General Use locker rooms.

- c. Nothing in this paragraph shall be construed so as to require (1) the splitting of any team's locker assignment such that the entire team does not use the same space or (2) the construction or alteration of existing facilities.

2. Practice & Competitive Facilities

- a. Brown will continue to ensure that practice and associated facilities and/or competitive areas, including courts, fields and associated facilities are maintained to the same extent for teams of both genders on a program-wide basis. To the extent that a particular facility contains amenities, such as water fountains and/or bathrooms, such amenities shall be equally available to all teams using such facility.
- b. To the extent that conference rooms and/or meeting rooms are made available to student-athletes, they will be equally available to all teams, within such limitations as are applied to all teams.
- c. To the extent that any paired sport does not practice on a regulation field or court, teams may alternate, annually, assignment of such practice

field or court with the paired sport at the request of either coach to the appropriate departmental administrator. That administrator shall make court or field assignments consistent with such request to the extent possible consistent with the scheduling of other teams or other uses by the University community. This paragraph shall not require any physical changes in Brown's facilities or fields. For purposes of this paragraph, sports shall not be considered "paired" if they do not use identical size fields/courts.

- d. The University will continue to use its best efforts to provide adequate access to the various constituencies using its field (including, but not limited to, club, intramural and non-athletic uses). To the extent that fields are overused, Brown will seek to schedule fields so that such overuse does not disproportionately affect the varsity programs of one gender as compared to the other.

F. Scheduling of Games and Practice Times

Brown will continue its current or substantially similar practices in scheduling games and practice times. The current competitive schedules are attached to this agreement as Attachment B. The current practices in regard to the scheduling of games and practice times are described in the

1994-95 policies and procedures manual, attached as Attachment C.

G. Weight Room

1. Brown will continue to ensure that its intercollegiate weight room is available daily to all student athletes on a first come, first serve basis, and will enforce the following:
  - a. Intercollegiate weight room etiquette will be strictly enforced requiring re-racking by all student athletes;
  - b. Lighter free weights will continue to be provided as necessary. To the extent that lighter free weights are misplaced, lost, removed or otherwise become unavailable more frequently than heavier weights, replacement and/or ordering schedules will be adjusted or additional security measures will be employed as deemed appropriate by the Athletic Department;
  - c. Weight belts adjustable to all student athletes' waist sizes will continue to be provided;
  - d. No team may sign up for group use of the intercollegiate weight room from 4:00 to 7:00 p.m., male or female. Brown will continue its policy that no team, male or female, will be given exclusive use of the facility at any time;

- e. Team posters, displays and other communications in the intercollegiate weight room will be provided by each coaching staff. It will be the responsibility of each head coach to do so.
- f. The head coach of each men's and women's team, in consultation with the weight trainer, will develop an appropriate weight training program for his or her team.

H. Program-Wide Financial Support

1. Equipment and Supplies

- a. Coaches will provide all athletes with apparel necessary for both practice and competition. Equipment used for practice and competition shall be provided to all team members to the same extent, except that the nature of the position or need of the athlete may be taken into consideration in determining the particular number or nature of items. However, subject to the foregoing, no athlete shall receive duplicate or multiple items unless each student-athlete receives at least one of such item. To the extent that items are considered personal preference items, individual athletes, with coaches' permission, will be permitted to use non-university issued equipment. A coach may omit providing athletes with any item

which is considered to be a personal preference item, provided such policy is followed consistently with respect to all athletes on his or her team. To the extent that any such necessary equipment is not provided by the coach, coaches shall report to the Athletic Director such use of personal equipment by athletes on their teams. The University shall ensure that, on an overall basis, the requirement that athletes provide their own equipment shall not disproportionately affect either gender. This paragraph shall not preclude coaches from providing additional equipment or apparel through the use of gift funds, fundraising, product endorsements or gifts. The current allocation of equipment and supplies, as supplied by the coaches, is attached as Attachment D. Brown will continue such allocation or a substantially similar relative allocation.

- b. Brown will continue to insure that replacement equipment is provided and or existing equipment is reconditioned so that athletes will have necessary equipment throughout the practice and playing season as applicable.
- c. Nothing in this paragraph will preclude Brown from reducing the overall percentage of equipment funding provided to teams so long as such reduction

is done on an overall basis affecting all teams and is not ameliorated disproportionately for men versus women through the use of gift funds, fundraising, product endorsements or gifts.

- d. The equipment room will continue to stock practice gear in a range of sizes appropriate to the mix of women and men in the varsity program. Athletic supporters and sports bras will continue to be provided.

2. Video Recording and Playback

- a. To the extent that any varsity team has a need for video equipment (including cameras and playback equipment), but does not own such equipment, it will be permitted to purchase such equipment from gift funds or to use Athletic Department equipment. The University will determine whether a checkout system or part-year assignment of video equipment is most feasible, and may impose a reasonable fee schedule for such use.
- b. There shall be no policy against individual coaches using their own team's funds to purchase video equipment for their team.

3. Training Trips

Teams will be given equal opportunity for special training trips to be paid from their gift accounts. The 1993-94 schedule of training trips is set forth in

Attachment E. Brown will continue to provide such training trips comparable on a program-wide basis to those set forth in Attachment E. In the event that there is a reduction in training trips, such reduction shall not disproportionately affect one gender on a program-wide basis.

4. Post-Season Competition

All teams and individuals that qualify will be able to participate in post-season championship competition. The cost of post-season championship competition for any team shall not provide a basis for providing any additional travel to any other team. To the extent that the University provides funding for any varsity team or athlete to participate in post-season NCAA, Ivy or ECAC championship competition for which the team or athlete qualifies, the University shall assure all varsity level teams of the same level of funding for NCAA, Ivy or ECAC championships.

5. Travel and Per Diem

Brown will continue to provide an equal per diem per person for each team, provided, however, that where the size of the team or other extenuating circumstance (e.g., complexity of schedule, location of lodging, time of arrival or departure) make it impractical or impossible to provide any scheduled meal within the established per diem, then additional funds (to the extent that such

funds are permitted by NCAA rules), if requested in writing and in advance of travel, may be approved, in advance, for the purchase of a team meal.

6. Coaching

- a. Brown agrees to maintain a coaching allocation substantially similar to that which exists for the 1994-95 academic year during the term of this Agreement. The coaching allocation for the 1994-95 academic year is set forth in Attachment F.
- b. Coaching will continue to be provided in an equitable manner which permits teams to compete within the Ivy League and for coaches to engage in reasonable recruiting efforts. The use of gift account funds to enhance recruiting efforts shall not be prohibited, subject to Sports Foundation and Athletic Department approval. The parties agree that the allocation of coaches set forth in subparagraph a, above, satisfies this subparagraph.
- c. Consistent with Brown's current policy, which provides automobiles to head coaching staff on a "need" basis, automobiles and/or travel reimbursement will be provided to all head coaches who qualify, provided this paragraph does not conflict with any existing contractual requirements.

- d. The compensation and benefits paid to each coach will be determined on a case-by-case basis, but the governing principle will be obtaining coaching staff which will continue or enhance the competitive level of each team. Market and competitive factors will be taken into consideration in determining coaches' salaries. Brown will provide all head coaches with an initial contract of the same number of years' duration.
- e. Support staff whose duties or responsibilities entail service to more than one team shall have their time allocated proportionately among such teams based upon team needs, so long as the allocation does not disproportionately affect one gender. The current assignment of the support staff is set forth in Attachment G. This assignment or one substantially similar to it shall be continued for the duration of this Agreement.

I. Training Services and Facilities

- 1. Brown shall continue to adhere to the 1994-95 schedule allocating trainers for home practices and home and away competitions or one substantially similar to it. That current schedule, as provided by Brown's Athletic Department, is set forth in Attachment H.
- 2. To the extent the training room at OMAC and Pizzatola is open whenever funded varsity teams are practicing at the

facility, it shall be open for both men and women's teams.

3. Teams engaging in outdoor practices shall have access to a communicating device to contact a trainer in the event of an emergency.
4. Brown will use its best efforts to arrange with all universities it competes with to provide trainers for visiting opponents. Brown reserves the right to send trainers to away competition based on the nature of the sport (e.g. contact sports).

J. Housing and Dining Services and Facilities

1. To the extent that Brown provides teams with housing and dining services and facilities, it shall continue to provide men's and women's teams with comparable housing and dining services and facilities, including during vacation.

K. Publicity and Promotion

1. The Sports Information Department will continue to devote substantially the same amount of attention to men's and women's teams. So long as the SID employs two individuals on a full time basis, one will be given primary responsibility for the women's program. To the extent that SID employees have other duties, such duties shall be distributed so that the men's program and women's program receive substantially the same attention. The number of home games which SID covers will be

substantially equal, on an overall basis, for men and women's teams.

2. Each coach will be provided a kit to help him or her prepare material to be passed on to the media. Coaches and the SID shall have the following responsibilities:
  - a. Each coach will call into a local newspaper the results of all away competitions or designate a member of his or her staff to do so;
  - b. SID will report all results of any day's competition to a local newspaper or the campus-based newspaper at or after 7:00 p.m. if reported by the head coach to SID prior to that time.
3. To the extent that media and/or recruiting guides are provided to teams, they will be provided to all teams in a similar format and comparable size. The number of pages may, however, vary based upon the number of athletes. The number of pages devoted to general information (not including historical statistics) shall be of comparable length. Coaches may request, in writing, permission to produce larger or smaller media and/or recruiting guides, which requests shall be reviewed on a case by case basis. Reasons for deviation shall include, but not be limited to, practices of other Ivy League institutions, demonstrated press interest in particular sports or statistics, and Ivy League or NCAA requirements. To the extent that deviations are granted,

they shall not be granted disproportionately for men or women. However, the granting of a deviation for one team shall not, in and of itself, provide a basis for the granting of a deviation for any other team.

4. To the extent that public address systems are used to announce the competition at athletic events, Brown will insure that such systems are used at men's and women's events on a comparable basis. To the extent that such systems are used to announce upcoming athletic events, Brown will insure that comparable announcements are made regarding upcoming women's and men's events.
5. To the extent that competitive schedules are printed and/or paid for by Brown, they will be printed and/or paid for on a comparable basis for men's and women's teams. Teams may create programs for sale at their events provided there is a reasonable prospect that the cost of production will be recouped through such sale. Initial funding shall be from gift accounts. In the event that outside vendors wish to provide programs for free (in exchange for the right to sell advertising within such programs), Brown will endeavor to persuade such outside vendors to contribute similar programs to paired teams, if any.
6. Brown shall use its best efforts to insure that the number of promotional events for home competitions are substantially equivalent for men's teams and women's

teams. The particular manner and method of promotion need not be comparable, provided that the promotions are reasonably related to the popular appeal of the competition, historical crowd size, facility features, etc. In administering promotions, Brown may require coaches to submit proposals for promotional activities, and coaches may require team members to actively participate in promotional activities. The fact that a competition has an admission charge shall not, by itself, determine which events are promoted.

7. To the extent that the nature of the sport and/or NCAA or Ivy requirements necessitate statistic gathering, all teams shall be treated alike. To the extent that Brown otherwise assigns students and/or staff to gather statistics appropriate for the sport at home competitions, they shall be assigned on a comparable basis for men and women.

L. Recruiting

Recruiting budgets will be based upon a formula which is applied to all varsity teams. The formula shall consider the needs of the teams and the competition, among institutions, for recruits. The current formula and application of it are set forth in Attachment I. A substantially similar formula and application shall be continued but, to the extent that either is changed, it will not disproportionately impact one gender. Gift funds may be used for recruiting, and the

University may, at its discretion, provide or authorize additional recruiting funds for particular teams based upon the University's assessment of its best interests, so long as such additional funds do not disproportionately impact one gender on a program-wide basis. During the term of this Agreement, the University shall make available sufficient recruiting funds, including both University and gift funds, reasonably anticipated to maintain the level of competitiveness of each team.

M. Admissions

1. Brown will continue to ensure that women and men student athletes and potential student athletes are given comparable consideration for admission to Brown.
2. The University will continue to apply the same criteria for financial aid for men and women. Consideration for financial aid will continue to be given on a student by student basis, and no financial aid will be given based upon a comparison between or quotas provided to men's or women's teams.

N. Reporting

1. No later than June 1 of each year, during the term of this Agreement, Brown shall prepare an annual report with regard to its compliance with this Agreement for the academic year just being completed. A copy of the report shall be provided to Plaintiffs' counsel no later than June 1 of that year. If Plaintiffs' counsel has any

comment, objection or request for consideration with regard to the report, Plaintiffs' counsel shall provide Defendants' counsel with a written statement specifically setting forth such comment, objection or request for consideration within 30 days. Within 20 days thereafter, Defendants' counsel shall respond to Plaintiffs' counsel's comment, objection or request for consideration. If any differences are not resolved or settled within 15 days of Plaintiffs' receipt of Defendants' response, either party may seek review by or relief from the Court, provided, however that neither party may seek such review or relief without the parties first having met and conferred in an effort to resolve their differences. Thereafter, the parties shall request expedited hearings.

2. The report shall provide information which will enable Plaintiffs' counsel to determine whether Brown has complied with the terms of this Agreement in the academic year just being completed, including the following:
  - a. All changes to Attachments A through I to the Agreement for the year just being completed or updated versions of Attachments A through I with changes designated;
  - b. Year-end budget Summary Reports (University and all gift accounts) showing total amounts budgeted and

expended by line item for each intercollegiate athletic funded varsity team;

- c. Brown's budgeting allocation, if any, of line items among University and Gift accounts and the proportion on which the allocation is based;
- d. The minimum number of hours each men's and women's head coach is required to devote to fundraising;
- e. Any changes in the allocation of practice and competitive facilities;
- f. The weight training programs, if any, developed for each team;
- g. Any changes in the video equipment owned by each team and a description of the checkout or assignment system used by Brown for those teams that do not own video equipment;
- h. The post-season championship competition, if any, participated in by each men's and women's team and the level of funding for that purpose provided to those teams by the University;
- i. The amount of the travel per diem and any additional funds approved for the purchases of team meals;
- j. The housing and dining services and facilities, if any, provided by Brown to men's and women's teams, including during vacations;

- k. The names and titles of each Sports Information Department employee and the employee's responsibilities, a brief description of the kit provided to each coach to help him or her prepare material to be passed on to the media, and the media and/or recruiting guides, if any, provided to each men and women teams;
  - l. The competitive schedules printed and/or paid for by Brown;
  - m. A description of each of the promotional events at home competitions for men's and women's teams;
  - n. A summary of the assignments made to gather statistics at home competition for each sport; and
  - o. The Academic Index report, if any, with personally identifiable student educational information removed pursuant to applicable federal or state law (e.g., FERPA).
3. To the extent that Brown is unable to or does not provide a complete report by June 1, Brown shall prepare and provide a supplementary report containing the remaining information as soon as possible but no later than July 15. If Plaintiffs' counsel has any comment, objection or request for consideration with regard to the supplemental report, Plaintiffs' counsel shall provide Defendant's counsel with a written statement specifically setting forth such comment, objection or request for

consideration within 20 days. Within 20 days thereafter, Defendants' counsel shall respond to Plaintiffs' counsel's comment, objection or request for consideration. If any differences are not resolved or settled within 15 days of Plaintiffs' receipt of Defendants' response, either party may seek review by or relief from the Court, provided, however that neither party may seek such review or relief without the parties first having met and conferred in an effort to resolve their differences. Thereafter, the parties shall request expedited hearings.

4. Notwithstanding the foregoing, Plaintiffs may, in the case of an alleged gross violation of this Agreement, seek relief from the Court, provided that they have first notified Defendants of the alleged gross violation and spent a reasonable period of time meeting and conferring with Defendants in an attempt to resolve the issue.
5. In evaluating any alleged violation of this Agreement, the Court shall take into consideration that this Agreement is intended to require the equitable treatment of men and women athletes on a program-wide basis. The provisions of this paragraph shall apply to violations alleged by class members collectively or individually.
6. Nothing in this Agreement shall be construed as requiring or permitting any Brown coach, administrator, staff

member, or student athlete to violate any provision of NCAA legislation or Ivy or other applicable regulations.

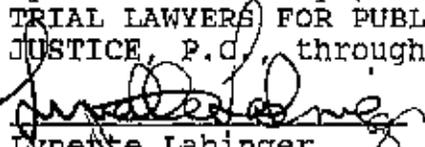
O. Class Notice

In accordance with Federal Rule of Civil Procedure 23(e), the parties will jointly move the Court to enter an order: (a) tentatively approving this Agreement and (b) providing for individual and publication notice to the class, the filing of objections, if any, to the Agreement, and the scheduling of a hearing to consider final approval of the Agreement. The parties will cooperate in identifying the members of the class and drafting the language of the class notice. Defendants will provide the notice to the class members in a form agreeable to Plaintiffs' counsel.

P. Costs and Attorneys' Fees

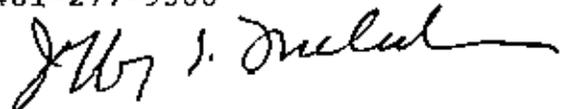
With reference to those matters addressed in this Agreement, each party reserves the right to claim a Court award of costs and attorneys' fees from the other, if that party's claim for such costs and fees is not otherwise resolved. Each party reserves the right to present any and all defenses to such claims.

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Date: Dec, 16, 1994